

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8726 OF 2005

Thomas Silu Fos.

...Petitioner

Versus

The Collector of Thane & Ors. ...Respondents

Shri Sujay N. Gawade for the Petitioner.

Shri D.A.Patil, A.G.P for the Respondents.

CORAM : S.C. DHARMADHIKARI, J.

DATE : JANUARY 16, 2006.

P.C.:

1. Heard Shri Gawade appearing for the petitioner. In the Writ Petition, the petitioner has averred that relying upon an exparte order passed by the Divisional Commissioner on 25th January, 2005, the impugned order has been passed and, therefore, no useful purpose would be served by filing an Appeal against the order of the Collector.

2. Having perused the Writ Petition and the annexures thereto as well as hearing the learned A.G.P, in my view, it would always be open for the petitioner to point-out to the Appellate Authority that the exparte order passed on 25th January, 2005 is not binding upon him as well as the Appellate

Authority and the Appellate Authority is required to apply its mind independently to the merits of the matter and pass appropriate orders in accordance with law after hearing the petitioner. He can also urge that the Appellate Authority, as postulated by law, is required to apply its mind independently to an Appeal preferred by the parties like the petitioner and not dispose of the same in the light of some commands or directions issued by the superior officers including the State Government. Therefore, the Appellate remedy can be availed of by him. Accordingly, the present petition is disposed of with the direction that it would be open to the petitioner to move the Appellate Authority and upon such Appeal being preferred by the petitioner, the Appellate Authority shall decide the same on merits and in accordance with law uninfluenced by the observations in the order dated 25th January, 2005. It would also be open for the petitioner to apply for appropriate interim reliefs in Appeal. Leaving all contentions on merits open to be urged in Appeal, petition is disposed of.

(S.C.DHARMADHIKARI,J.)